National Broadcasting
Company, Inc.

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EX PARTE OR LATE FILED

February 29, 2000

Magalie Romas Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in CS Docket No. 99-363

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, this is to advise you that Diane Zipursky, Senior Washington Counsel, National Broadcasting Company, Inc., and Arthur Goodkind, of Koteen & Naftalin, representing NBC, met on Tuesday, February 22, 2000, with David Goodfriend of Commissioner Ness' office to discuss the above-referenced docket.

The substance of the discussions has already been covered in our previously-filed comments in this proceeding and is contained in the enclosed materials as well, a copy of which was presented at the meeting.

Respectfully yours,

Diane Zipursky

Enclosure
cc: David Goodfriend

NBC'S POSITION CONCERNING GOOD FAITH NEGOTIATIONS

1. Carriage of local broadcast signals is of great value to satellite carriers. Carriage of a package of local signals is absolutely essential to permit satellite carriers to compete with cable for subscribers. In addition, the carriers will charge customers directly for local signals.

2. A "no consideration" deal is not the "norm" for retransmission consent for either cable or satellite. To the extent that many retransmission consent arrangements with cable have in the past involved relatively low levels of consideration, that has reflected cable's past lack of competition and its status as a monopoly gatekeeper.

Under retransmission consent negotiations as they have existed until now, failure to reach an agreement has meant that a broadcast station's signal is not carried by the cable gatekeeper. A station in that position has thus been faced with the loss of approximately 70% of its viewing audience. A typical cable system on the other side of the table, on the other hand, has been faced with the loss of only one channel (albeit an important channel) among the 50 to 100 channels it offers subscribers, and cable subscribers not wishing to give up those 50 to 100 channels have had no other alternative but to continue subscribing to the cable system. Cable operators have therefore had superior bargaining power, particularly since broadcasters are prohibited by the antitrust laws from bargaining jointly in the same market

3. Congress has now created new competitive conditions as between cable and satellite MVPDs. Because both now have the ability to obtain local signals for carriage, there will be genuine competition between them. Congress has also recognized the value of local signals by explicitly authorizing stations to negotiate with both cable operators and satellite carriers for retransmission consent.

4. Negotiation means negotiation. In any good faith negotiation, everything not unlawful is on the table. Most deals are packages of different elements and nothing is agreed to until all points are agreed to. Even under the past uneven conditions of bargaining, cable deals have involved a variety of different forms of consideration. These arrangements have not infrequently involved carriage by the cable operator of programming, spots, or entire channels in addition to carriage of a broadcast station's local signal.

5. The FCC should not become involved in the substance of

retransmission consent negotiations. It should not rule large portions of the normally anticipated currency of exchange off the table before negotiations even start -- and before there has been any experience with the satellite retransmission negotiation process.

6. "Bad faith" in the negotiation process should instead be defined in terms of the process itself, not its substance. Substance should be considered only if a party to the negotiation persists in a patently unreasonable demand -- for example, a demand by a broadcast station that it be paid $10 per month for its retransmission consent. Beyond patent unreasonableness, no proposal should be considered evidence of bad faith unless the proposal is illegal under the antitrust laws or any other laws. What is otherwise patently unreasonable should be determined on an ad hoc basis if and when specific complaints are filed.

7. Similarly, differences between different retransmission consent agreements that contain no unlawful or patently unreasonable conditions and that are freely negotiated in good faith in the marketplace should be deemed to be differences based on marketplace considerations. That conclusion is inherent in the concept of negotiation itself, a concept that Congress has explicitly incorporated into the SHVIA.